

services previously performed by Plaintiff pursuant to contracts for Years Three through Five;

- d. Compelling ACBOE to hold a fair and open bidding process, under the supervision of the court, for the award of any further contracts for the 2003-2004 school year and future years;
- e. Awarding Plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- f. Awarding such other relief as the court shall deem equitable and just.

COUNT FOUR
BREACH OF IMPLIED CONTRACT
(against ACBOE, MTG, Alemar and Friedman)

81. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

82. By utilizing the public bidding process, ACBOE and Alemar induced the Plaintiff to participate in the process by the promise of impartiality. MTG conspired with these defendants in this unlawful conduct.

83. By utilizing the public bidding process, ACBOE and Alemar agreed to the implied condition that it would honestly, fairly and impartially consider each bid. MTG conspired with these defendants in this unlawful conduct to defraud plaintiff.

84. The Plaintiff in fact submitted a bid in reliance upon these implied conditions, and incurred substantial costs and investments of time and resources in doing so.

85. The actions of ACBOE and Alemar were fraudulent, in bad faith, arbitrary and capricious in that they breached the implied condition by favoring MTG, and failing to treat each bid fairly and honestly. MTG conspired with these defendants in this unlawful conduct.

86. ACBOE and Alemar did not have a reasonable basis for awarding the Year Six or Year Seven contract to MTG, since MTG's accepted bid contemplated the replacement of equipment that is fully functional, and was unreasonable in other respects.

87. As a direct and proximate result of defendants' acts, plaintiff has suffered substantial monetary damages, damage to reputation and irreparable harm.

WHEREFORE, Plaintiff demands judgment against ACBOE, MTG, Alemar and Friedman as follows:

- a. Adjudging and declaring that contract for Year Six between ACBOE and MTG is null and void;
- b. Enjoining ACBOE and MTG from proceeding with the Year Seven contract;
- c. Compelling ACBOE to immediately process in the normal course of business all outstanding amounts due on all accounts receivable for services previously performed by Plaintiff pursuant to contracts for Years Three through Five;
- d. Compelling ACBOE to hold a fair and open bidding process, under the supervision of the court, for the award of any further contracts for the 2003-2004 school year and future years;
- e. Awarding Plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- f. Awarding such other relief as the court shall deem equitable and just.

COUNT FIVE
BREACH OF CONTRACT-PAST SERVICES
(against ACBOE)

88. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

89. The Plaintiff has provided ACBOE with both equipment and services pursuant to Plaintiff's obligations under the Year Two through Five contracts and purchase orders.

90. Plaintiff has invoiced ACBOE for that equipment and services, and has otherwise demanded payment from ACBOE, but ACBOE has failed and refused to pay for that equipment and services.

91. ACBOE has accepted this equipment and services, but has failed to pay for Years Three through Five equipment and services received.

92. The Plaintiff and ACBOE have engaged in a prior pattern of performance whereby equipment and services ordered and accepted by ACBOE through purchase orders created an obligation on the part of ACBOE to pay for those services and equipment.

93. The contracts between Plaintiff and ACBOE for Years Three through Five are evidenced by purchase orders issued by ACBOE to the Plaintiff and by Service and Maintenance Agreements.

94. The Service and Maintenance Agreements each provide at 13.1 that:

Attorney's Fees: In any action or arbitration at law or in equity, including an action for declaratory [sic] relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

95. ACBOE is in default of its payment obligations and has breached the contracts with the Plaintiff.

96. As a direct and proximate result of ACBOE's breaches, Plaintiff has suffered substantial damages, damage to reputation and irreparable harm.

WHEREFORE, Plaintiff demands judgment against ACBOE as follows:

- a. Compelling ACBOE to immediately process in the normal course of business all outstanding amounts due on all accounts receivable for services previously performed by Plaintiff pursuant to contracts for Years Three through Five;
- b. Awarding plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- c. Awarding such other relief as the court shall deem equitable and just.

COUNT SIX
TORTIOUS INTERFERENCE
(against all defendants)

97. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

98. Plaintiff has maintained a reasonable expectation of economic advantage arising from the contracts for Years Two through Five, pursuant to which it has provided equipment and services to the ACBOE, which was paid primarily by the Federal Government.

99. The relationship at issue in this case, as explained in greater detail above, involves a tri-partite relationship between the Federal Government, the Plaintiff and ACBOE.

100. As a result of defendants' intentional wrongdoing Plaintiff has lost this reasonable expectation of economic advantage.

101. In addition, Plaintiff was in the process of negotiating a contract with the City of Atlantic City to provide equipment and services similar to those which the Plaintiff has provided to the ACBOE, but those contract negotiations have ceased as a result of ACBOE's, Nickels' and Haye's untrue statements about the Plaintiff.

102. As a direct and proximate result of Defendants' acts, Plaintiff has suffered substantial damages, damage to reputation and irreparable harm.

WHEREFORE, Plaintiff demands judgment against defendants as follows:

- a. Adjudging and declaring that contract for Year Six between ACBOE and MTG is null and void;
- b. Enjoining ACBOE and MTG from proceeding with the Year Seven contract;
- c. Compelling ACBOE to immediately process in the normal course of business all outstanding amounts due on all accounts receivable for services previously performed by Plaintiff pursuant to contracts for Years Three through Five;

- d. Compelling ACBOE to hold a fair and open bidding process, under the supervision of the court for the award of any further contracts for the 2003-2004 school year and future years;
- e. Awarding Plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- f. Awarding such other relief as the court shall deem equitable and just.

COUNT SEVEN
DEFAMATION
(against ACBOE, Nickels and Haye)

103. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

104. ACBOE, Nickels and Haye have made numerous false, defamatory statements of fact to third parties concerning Plaintiff's qualifications, billings, and performance of its contractual obligations, without factual basis or justification.

105. The Defendants knew that the statements about the Plaintiff were false, or otherwise were reckless or acted negligently in failing to ascertain the truth or falsity of the statements before communicating them to third parties in disregard of the truth or falsity of the statements.

106. The Defendants' actions were actuated by actual malice or accompanied by a wanton and willful disregard of the harm that would foreseeably result to Plaintiff, thereby entitling Plaintiff to punitive damages.

107. As a direct and proximate result of Defendants' acts, Plaintiff has suffered substantial economic damages, damage to his business and professional reputation and irreparable harm.

WHEREFORE, Plaintiff demands judgment against ACBOE, Nickels and Haye as follows:

- a. Awarding plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- b. Awarding such other relief as the court shall deem equitable and just.

COUNT EIGHT
INJURIOUS FALSEHOOD
(against ACBOE, Nickels and Haye)

108. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

109. Defendants ACBOE, Nickels and Haye made numerous disparaging comments concerning Plaintiff's business to outside third parties, with the intent to hinder or otherwise negatively affect Plaintiff's business.

110. As a direct and proximate result of Defendants' acts, Plaintiff has suffered substantial economic damages, damage to its business and professional reputation and irreparable harm.

WHEREFORE, Plaintiff demands judgment against ACBOE, Nickels and Haye as follows:

- a. Awarding plaintiff compensatory and punitive damages as well as attorney's fees and costs; and
- b. Awarding such other relief as the court shall deem equitable and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

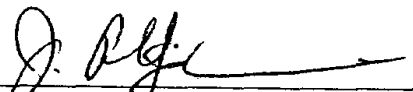
DESIGNATION OF TRIAL ATTORNEY

J. Philip Kirchner, attorney at law, is hereby designated as trial counsel on behalf of the firm of Flaster/Greenberg P.C.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies that the within matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding. A previously pending action brought against the same parties by plaintiff RelComm, Inc. in the United States District Court for the District of New Jersey has been withdrawn by the plaintiff without prejudice. There are no other known parties who should be joined in this action at this time.

FLASTER/GREENBERG P.C.
Attorneys for Plaintiff

By: 
J. Philip Kirchner, Esquire
Cindy M. Ferr, Esquire

DATED: February 11, 2004

CLERK OF SUPERIOR COURT
ATLANTIC COUNTY
CLERK OF SUPERIOR COURT
CIVIL DIVISION - FILED

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RELCOMM, INC.,

Plaintiff

v.

**ATLANTIC CITY BOARD OF
EDUCATION, FREDRICK P. NICKELS,
MICRO TECHNOLOGY GOUPE, INC.
AND DONNA HAYE**

Defendant

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
Docket No. ATL-L-477-04**

Civil Action

**ANSWER AND COUNTERCLAIM TO
PLAINTIFF'S COMPLAINT**

Defendant, ACBOE, by and through its attorneys, Rovillard & Blee, L.L.C. responds to the Plaintiffs Complaint as follows:

A. THE PARTIES

1. This answering defendant lacks sufficient knowledge and information with which To respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.
2. The allegations of this paragraph are admitted.
3. The allegations of this paragraph are admitted.
4. This allegation is not directed to this defendant and no answer is required.
5. The allegations of this paragraph are admitted.
6. This allegation is not directed to this defendant and no answer is required.
7. This allegation is not directed to this defendant and no answer is required.

8. This allegation is not directed to this defendant and no answer is required.

B. FACTS

9. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

10. The allegations of this paragraph are admitted.

11. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

12. This allegation is not directed to this defendant and no answer is required.

13. This allegation contains a legal conclusion and, therefore, no response is required.

14. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

15. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

16. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

17. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

18. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

19. The allegations of this paragraph are denied. By way of further answer, this

allegation contains allegation contains a legal conclusion and, therefore, no response is required.

20. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

21. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

22. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs. By way of further answer, to the best of this answering defendant's knowledge, the ACBOE and RelComm did not enter into a Services and Maintenance Agreement.

23. The allegations of this paragraph are denied.

24. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

25. The allegations of this paragraph are denied. It is specifically denied that there was any written Agreement with RelComm regarding services and equipment as a part of the Year Four application for funding under the E-Rate Program.

26. The allegations of this paragraph are denied. By way of further answer, the ACBOE denial to pay this amount does not violate federal law and the E-Rate Program rules if the fees and services performed were excessive and unreasonable.

27. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

28. Admitted in part; denied in part. It is admitted that the ACBOE believes that it

does have contractual obligations to RelComm and that it does not have the intention of paying RelComm for the unfunded portion of the Year Five application amount. It is denied that RelComm has provided all network maintenance service required by the ACBOE Year Five Grant Application.

29. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

30. The allegations of this paragraph are denied.

31. Admitted in part; denied in part. It is admitted that the ACBOE indicated its intention to submit an application for funding to the SLD under the Year Six of the E-Rate Program. It is denied that Alemar was hired without the approval of ACBOE members.

32. Admitted in part; denied in part. It is admitted that RelComm will not be selected as vender for any part of the ACBOE Year Six application. It is specifically denied that ACBOE authorized Jon Jones to inform RelComm that it would be contracted to provide network maintenance services to ACBOE under the Data Center's application for the Year Six E-Rate Program. It is further denied that the bidding process was tainted by numerous irregularities. It is admitted that ACBOE has selected another vender for participation in its Year Six E-Rate application.

33. The allegations of this paragraph are denied.

34. The allegations of this paragraph are denied.

35. The allegations of this paragraph are denied.

36. The allegations of this paragraph are denied.

37. The allegations of this paragraph are denied.

38. The allegations of this paragraph are denied.

39. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

40. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

41. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

42. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

43. This allegation contains a legal conclusion and, therefore, no response is required.

44. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

45. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

46. The allegations of this paragraph are denied. By way of further answer, this allegation is not directed to this defendant and no answer is required.

47. The allegations of this paragraph are denied. By way of further answer, this allegation is not directed to this defendant and no answer is required.

(a) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(b) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(c) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(d) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(e) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(f) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(g) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(h) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(i) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

(j) Admitted in part, denied in part. It is admitted that correspondence of 1/8/04 was received. However, the contents contained therein are specifically denied.

48. The allegations of this paragraph are denied. By way of further answer, RelComm's challenge to the Year Seven bid was unsuccessful.

49. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

50. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs. By way of further answer, this allegation is not directed to this defendant and no answer is required.

51. This answering defendant neither admits nor denies the allegations of this paragraph and leaves Plaintiff to its proofs.

52. The allegations of this paragraph are denied.

53. The allegations of this paragraph are denied.

54. The allegations of this paragraph are denied.

55. The allegations of this paragraph are denied.

56. The allegations of this paragraph are denied.

COUNT ONE
VIOLATION OF NEW JERSEY ANTITRUST ACT, N.J.S.A. 56:9-1, et sec.
(against all defendants)

57. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

58. The allegations of this paragraph are denied.

59. The allegations of this paragraph are denied.

60. The allegations of this paragraph are denied.

61. The allegations of this paragraph are denied.

62. The allegations of this paragraph are denied.

63. The allegations of this paragraph are denied.

64. This allegation contains a legal conclusion and, therefore, no response is required.

65. This allegation contains a legal conclusion and, therefore, no response is required.

66. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT TWO
FRAUD
(against all defendants)

67. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

68. The allegations of this paragraph are denied.

69. The allegations of this paragraph are admitted.

70. The allegations of this paragraph are denied.

71. The allegations of this paragraph are denied.

72. The allegations of this paragraph are denied.

73. The allegations of this paragraph are denied.

74. The allegations of this paragraph are denied.

75. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT THREE
VIOLATION OF NEW JERSEY'S PUBLIC SCHOOL
CONTRACTS LAW, N.J.S.A. 18A:18A-1 ET SES.
(against ACBOE, MTG, Alemar and Friedman)

76. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

77. This allegation contains a legal conclusion and, therefore, no response is required.

78. The allegations of this paragraph are denied.

79. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT FOUR
BREACH OF IMPLIED CONTRACT
(against ACBOE, MTG, Alemar and Friedman)

80. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

81. The allegations of this paragraph are denied.

82. The allegations of this paragraph are denied.

83. The allegations of this paragraph are denied.

84. The allegations of this paragraph are denied.

85. The allegations of this paragraph are denied.

86. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT FIVE
BREACH OF CONTRACT-PAST SERVICES
(against ACBOE)

87. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

88. The allegations of this paragraph are denied.

89. The allegations of this paragraph are denied.

90. The allegations of this paragraph are denied.

91. The allegations of this paragraph are denied.

92. The allegations of this paragraph are denied.

93. The allegations of this paragraph are denied. To the best of this answering defendant's knowledge, the Service and Maintenance Agreement was never executed by the parties in this action.

94. The allegations of this paragraph are denied.

95. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT SIX
TORTIOUS INTERFERENCE
(against all defendants)

96. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

97. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

98. This answering defendant lacks sufficient knowledge and information with which to respond to the allegations of this paragraph and, therefore, leaves Plaintiff to its proofs.

99. The allegations of this paragraph are denied.

100. The allegations of this paragraph are denied.

101. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT SEVEN
DEFAMATION
(against ACBOE, Nickles and Hays)

102. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

103. The allegations of this paragraph are denied.

104. The allegations of this paragraph are denied.

105. The allegations of this paragraph are denied.

106. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

COUNT EIGHT
INJURIOUS FALSEHOOD
(against ACBOE, Nickles and Hays)

107. Defendant repeats and incorporates by reference the responses contained in the preceding paragraphs as if fully set forth at length herein at length.

108. The allegations of this paragraph are denied.

109. The allegations of this paragraph are denied.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that Plaintiff be obligated to pay costs, attorney fees and any other relief this Court deems as fair and equitable.

JURY DEMAND

Defendant hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Michael J. Blee is hereby designated as trial counsel in the within matter.

ROVILLARD & BLEE, L.L.C.
Attorneys for Defendant

By:


Michael J. Blee, Esquire

Dated: 4/16/01

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the within matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding being contemplated. A previously pending action brought against the same parties by plaintiff RelComm, Inc. in the United States District Court for the District of New Jersey has been withdrawn by the plaintiff without prejudice. However, it is the opinion of the undersigned that the within matter should be consolidated with a case before the Court entitled **Jones v. Atlantic City Board of Education, et al** under **Docket No. ATL-L-84-04**. I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts as set forth in this original certification.

ROVILLARD & BLEE, L.L.C.
Attorneys for Defendant

Dated: 4/14/04

By:


Michael J. Blee, Esquire

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs Complaint should be dismissed for failure to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

This Court does not have jurisdiction to consider a violation of New Jersey Public School Contracts Law.

THIRD SEPARATE DEFENSE

Plaintiff has failed to comply with the procedural requirement for contesting a public bid.

FOURTH SEPARATE DEFENSE

This answering defendant never entered into a written agreement with the plaintiff at any time.

FIFTH SEPARATE DEFENSE

This answering defendant is not indebted in any sum or under any theory whatsoever to plaintiff.

SIXTH SEPARATE DEFENSE

Plaintiff is entitled to no compensatory damages from the defendant.

SEVENTH SEPARATE DEFENSE

Plaintiff's Complaint is barred by reasons of the statute of limitations and this defendant reserves the right to move for a dismissal of same.

EIGHTH SEPARATE DEFENSE

Plaintiff's Complaint is barred by the doctrine of laches.

COUNTERCLAIM

The Atlantic City Board of Education, whose principal office is located at 1809 Pacific Avenue, Atlantic City, New Jersey, by way of counterclaim against the plaintiff, RelComm, Inc., says:

COUNT ONE THE ACBOE IS ENTITLED TO A REFUND OR A SETOFF FOR EXCESSIVE BILLING BY RELCOMM, INC.

1. At all times relevant hereto, defendant, Atlantic City Board of Education [herein referred to as ACBOE] is a New Jersey municipal corporation responsible for all public education activities within the Atlantic City School District.

2. At all times relevant hereto, RelComm, Inc. [herein referred to as RelComm] is a New Jersey Corporation with its principal place of business located at 408 Bloomfield Drive, Suite 3, West Berlin, New Jersey.

3. RelComm is in the business of designing, installing and maintaining Computer networks, including both hardware and software, and performed certain work and provided certain materials to the ACBOE.

4. To the best of the defendant-counterclaimant's knowledge, the ACBOE and RelComm never entered into a written agreement regarding the supplying of hardware services and/or maintenance technical support during the entire duration of RelComm's involvement with ACBOE through the E-Rate Program referenced within plaintiff's Complaint.

5. The ACBOE was presented with a Final Invoice 02-333 dated March 4, 2002 from RelComm, which is attached hereto as Exhibit "A".

6. Within this final invoice, RelComm is seeking a total payment of \$3,095,200.00

less \$2,692,800.24 to be received from the federal funding commitment discount FRN566316 for a total payment from the ACBOE of \$402,376.00.

7. On or about January of 2003, a school district representative was attending an educational technology program and the subject of the goods and services provided by RelComm to the ACBOE was discussed with representatives from Hewlett Packard.

8. After some investigation by the ACBOE with the assistance of representatives from Hewlett Packard Computer Company, the ACBOE became aware that RelComm excessively over billed the ACBOE for services provided.

9. Specifically, the invoice from RelComm indicates that the company supplied thirty-two R333 Enterprise Servers to the school district for the amount of \$2,368,000.00. Thus, RelComm supplied ACBOE with servers costing approximately \$74,000.00 per server.

10. Based upon information supplied directly from Hewlett Packard, by way of comparison, the actual cost of their Enterprise Server is substantially less.

11. Based upon information and belief, ACBOE was billed \$2,368,000.00 for thirty-two RelComm built Aspen servers, which was based upon a branded name, should have been sold for substantially less.

12. Invoice 02-333 of March 4, 2002, also provides a separate line item for one-year maintenance technical support for the network server in the amount of \$524,000.00. Based upon information and belief provided directly from Hewlett Packard Computer Company, the fees for such services are excessive.

13. The excessive billing of the ACBOE by RelComm, can be further demonstrated

by the recent Year Six E-Rate award and bidding. Near the end of the year 2002 and into the beginning of the year 2003, the ACBOE retained the services of Alemar Consulting located in Broomall, Pennsylvania, in order to oversee and prepare all documents related to the Federal E-Rate Program.

14. Mr. Martin Friedman, the president of Alemar Consulting was identified as a contact person in the form 471 application for the Federal E-Rate Program on behalf of the ACBOE.

15. Bid specifications were sent out for vendors to bid on both telecommunications programs and internal connections. The bid specifications requested bids for servers. There were bids for three types of servers. The most expensive server is known as "the Web Server". With respect to the bids for the Year Six E-Rate Program for the servers, MTG bid \$5,554.00 per server; Omicron bid \$6,699.00 per server; and Compuworld bid \$8,995.00 per server. Based upon information and belief, these are the similar servers that were provided by RelComm in previous years under the Federal E-Rate Program at a rate of \$74,000.00 per server.

16. With respect to the other types of servers for the Year Six E-Rate Program, for the "DNS" Server, identified as server number two, MTG bid \$5,192.00; Omicron bid \$3,459.00; and Compuworld bid \$4,995.00. With respect to the least expensive "DHOP" Server, identified as server number one, MTG bid \$4,284.00; Omicron bid \$3,099.00; and Compuworld bid \$4,895.00.

17. Based upon information and belief, it is believed that this excessive billing